2 Ct Propr.

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3/7/02

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

INTERNATIONAL MARKETING, INC.,	:	
	:	C.A. No. 1:CV 00-0697
Plaintiff,	:	
	:	
v.	:	(Magistrate Judge Smyser)
	:	
COUNTERACT BALANCING BEADS, INC.,	:	
	:	
Defendant.	:	

FILED
HARRISBURG
MAR 0 6 2002
MARY E. D'ANDREA, CLERK
Per
DEPUTY CLERK

MOTION OF COUNTERACT BALANCING BEADS FOR LEAVE TO FILE SUR REPLY BRIEF

Defendant Counteract Balancing Beads, Inc. ("CBB"), by and through its undersigned counsel, moves this Court for leave to file a Sur Reply Brief to correct certain misstatements presented in the Reply Brief of International Marketing, Inc. ("IMI") relating to IMI's Motion For Contempt. In support of this Motion, CBB states as follows:

1. Following a four-day bench trial in August 2001, on September 14, 2001, the Court entered a permanent injunction enjoining CBB "from making any statements to the public, its customers and potential customers in which

it states or otherwise leads people to believe that Counteract Balancing Beads cling to the inside of a tire in a balancing position as a result of electrostatic cling." (See September 14, 2001 Order).

2. On January 23, 2002, IMI filed and served its Motion For Contempt against CBB (the "Contempt Motion").

3. On February 14, 2002, CBB filed its Responsive Brief In Opposition To The Motion Of International Marketing For Contempt ("CBB's Response").

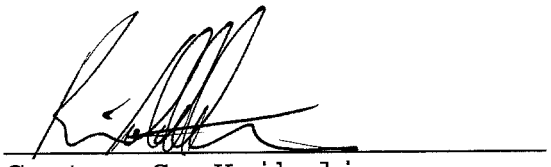
4. On March 1, 2002, IMI filed its Reply Brief In Support Of Motion For Contempt ("IMI's Reply").

5. Upon CBB's review of IMI's Reply, CBB notes that IMI has again misrepresented certain factual information regarding CBB's advertising in an effort to cover its prior falsehoods presented to the Court. These misrepresentations must be corrected to provide the Court with a complete and accurate picture of the relevant facts relating to IMI' Contempt Motion.

Accordingly, CBB respectfully requests leave of this Court to file a short Sur Reply Brief to correct the misstatements presented by IMI in its Reply Brief. A copy

of the proposed Sur Reply Brief is attached hereto as Exhibit A.

Respectfully submitted,



Costas S. Krikelis
Kevin W. Goldstein
RATNER & PRESTIA
Suite 209, Webster Bldg
3411 Silverside Road
P.O. Box 7228
Wilmington, DE 19803
(302) 479-9470

Attorneys for Defendant
Counteract Balancing Beads

Dated: March 5, 2002

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Motion of Counteract Balancing Beads For Leave To File Sur Reply Brief,* along with the proposed Sur Reply Brief was served upon the noted counsel of record by Federal Express on March 5, 2002.

Allen C. Warshaw, Esquire
Duane Morris & Heckscher LLP
305 North Front Street, 5th Floor
Harrisburg, PA 17108

Kevin W. Goldstein

A

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

INTERNATIONAL MARKETING, INC.,	:	
	:	C.A. No. 1:CV 00-0697
Plaintiff,	:	
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v.	:	(Magistrate Judge Smyser)
	:	
COUNTERACT BALANCING BEADS, INC.,	:	
	:	
	:	
Defendant.	:	

SUR REPLY BRIEF OF COUNTERACT BALANCING BEADS IN FURTHER OPPOSITION TO MOTION OF INTERNATIONAL MARKETING FOR CONTEMPT

Introduction

In an obvious attempt to deflect responding to the questions regarding the misrepresentations presented to this Court by International Marketing, Inc. ("IMI") in its Motion For Contempt, now IMI compounds its prior falsehoods with an additional misrepresentation relating to the "wrong brochure." In view of IMI's latest effort to misrepresent Counteract Balancing Beads, Inc.'s ("CBB") actions and conduct, and for the reasons presented in CBB's Responsive Brief, CBB respectfully renews its request that this Court

dismiss IMI's Motion for Contempt and impose appropriate sanctions against IMI.

Argument

A. IMI Knew That The Brochure Submitted As Exhibit G To Its Opening Brief Was A Later Revised Version Of The Brochure

IMI's description of its newly submitted Exhibit A brochure as being an "updated" brochure is, at best, disingenuous. IMI clearly knew and still knows that the current Exhibit A brochure is an old format of advertising used after the September 14 Order was entered, and that the Exhibit A brochure was soon thereafter revised to address certain *issues raised by IMI*. (*See* Affidavit of Roger LeBlanc, ¶¶ 5, 6, attached as Exhibit A).

More particularly, on November 9, 2001, IMI specifically brought its issues with the Exhibit A brochure to the attention of CBB and demanded its amendment. (*See* Exhibit B, November 9, 2001 email from Allen Warshaw). As shown in the November 9, 2001 email, IMI raised the issue that the CBB brochure contained the alleged improper language "[t]his remarkable feat of defying gravity, a kinetic clinging phenomenom is described in our patent

#6,128,952. The result is that the glass beads will do not [sic] disengage from the lining every time the tire stops motion." (*See* Exhibit B).

In response to IMI's November 9, 2001 complaint about the brochure, CBB reviewed the language at issue, along with re-reviewing all of the language contained in the brochure and revised the brochure. (*See* LeBlanc Affidavit, ¶ 5). On November 26, 2001, CBB specifically advised IMI that a new fold out brochure had been ordered from the printer. (*See* Exhibit C, November 26, 2001 email from Kevin Goldstein).

Thereafter, on December 3, 2001, CBB provided to IMI a copy of the updated fold out brochure that was now being used as part of CBB's advertising. (*See* Exhibit D, December 3, 2001 facsimile letter to Allen Warshaw). As noted by the facsimile line at the top of each page, it was this latest, updated brochure from CBB that IMI attached to its opening brief as Exhibit G. Obviously IMI knew that the brochure they received on December 3 was the updated brochure. They were so told. It is also abundantly clear that IMI knew and knows well that the brochure they are now attaching to their Reply Brief as Exhibit A was the old

brochure *that they requested be revised.* Indeed, that brochure is no longer being used by CBB in any advertising or materials directed to the United States. (*See* LeBlanc Affidavit, ¶ 8).

To suggest that the old brochure is an "updated" brochure or that CBB is attempting to "deceive" this Court about which brochure is the current brochure, given the true facts as documented here, is egregious. IMI knows which brochure is the latest version and which brochure is the old version, no longer being used in the United States. Instead of admitting that it was caught in presenting false information to this Court in its opening brief, IMI has now compounded those misrepresentations with additional misstatements. IMI can not hide from its wrongs.

B. IMI Did Review The CBB Website Contents Prior To Filing Its Motion For Contempt

Although IMI has asserted that the fact that it misrepresented to the Court the correct state of the CBB website was an "oversight," IMI nonetheless failed to answer the question of how such an "oversight" occurred given that IMI's own documents establish that IMI did review and know of the current CBB website on or about

January 23, 2002 when it filed its Motion. As previously established, IMI's Exhibits C, D, E, and F each plainly show that IMI downloaded, reviewed and printed the CBB website pages on January 22, 2002, the day before IMI filed its Motion. (*See* IMI Contempt Motion Exhibits C, D, E, and F, lower right hand corners each showing a date of 1/22/2002). This evidence plainly shows that IMI did know that the CBB website no longer contained the sections being complained of by IMI. Yet IMI still filed its motion knowing that it was based on misrepresentations and false evidence.

C. IMI Misunderstands The Holding In *Chuckleberry*

IMI misinterprets the decision in *Playboy Enterprises, Inc. v. Chuckleberry Publishing, Inc.*, 939 F.Supp. 1041, 1045, 39 USPQ2d 1746, 1752 (S.D.N.Y. 1996), by suggesting that the Southern District Court held that the defendant had to "shut down its internet site completely or adopt procedures prohibiting United States users from accessing the site." (*See* Reply Brief, at 12).

The court specifically stated that the defendant "cannot be prohibited from operating its Internet site merely because the site is accessible from within one

country in which its product is banned. To hold otherwise 'would be tantamount to a declaration that this Court, and every other court throughout the world may assert jurisdiction over all information providers on the global world Wide Web'." *Chuckleberry*, 939 F.Supp. at 1045, 39 USPQ2d at 1752. The court did not hold, as suggested by IMI, that "procedures prohibiting United States users from accessing the site" *had to be* implemented, but only held that the defendant was required *to stop accepting new subscriptions* from customers residing in the United States. *Chuckleberry*, 939 F.Supp. at 1043, 39 USPQ2d at 1747. Indeed, the court *specifically acknowledged* that the defendant "may continue to operate its Internet site," and "[i]n accord with this holding, an Italian customer who subsequently moves to the United States may maintain his or her subscription to the Internet site." *Chuckleberry*, 939 F.Supp. at 1045, 39 USPQ2d at 1752. In summary, what the *Chuckleberry* Court did was to stop the defendant from using its internet website to solicit subscriptions from United States customers.

Conclusion

For the reasons provided herein, as supplementing CBB's Responsive Brief, and as may be supplemented by oral argument, defendant CBB respectfully requests that this Court enter an Order denying plaintiff IMI's motion for contempt.

Moreover, in view of IMI's repeated misrepresentations and falsehoods presented to this Court, CBB respectfully requests that it be awarded its reasonable attorney's fees incurred in responding to and defending IMI's Motion.

Respectfully submitted,

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Kevin W. Goldstein
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Attorneys for Defendant
Counteract Balancing Beads

Dated: March 5, 2002

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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

INTERNATIONAL MARKETING, INC. Plaintiff, v. COUNTERACT BALANCING BEADS, INC. Defendant.	C.A. NO. 1:CV 00-0697

AFFIDAVIT

I, Roger LeBlanc being duly sworn, do depose and state as follows:

1. I submit this affidavit in support of the Sur Reply Of Counteract Balancing Beads ("CBB") In Further Opposition To The Motion Of International Marketing ("IMI") For Contempt (the "IMI Contempt Motion").

2. I have reviewed and am familiar with the filings and papers in this litigation. I have reviewed the Reply Brief of IMI in Support Of Motion For Contempt (the "Reply Brief").

3. I am the President of CBB. I have been the president of CBB since the creation of the company in April 1997.

3. As the President of CBB, one of my duties is to oversee and direct the selection, creation and implementation of advertising by and for CBB.

4. In its Reply Brief, IMI represents to the Court that an old brochure of CBB, attached to IMI's Reply Brief as Exhibit A, and attached to this Affidavit as Exhibit A, is an

"updated" brochure used after the brochure that was attached as Exhibit G to IMI's opening brief, and is attached to this Affidavit as Exhibit B.

5. This is untrue. The attached Exhibit A brochure was originally created and used for a short period of time after the entry of the September 14, 2001 Order. When IMI raised an issue about this brochure, and specifically the language that "[t]his remarkable feat of defying gravity, a kinetic clinging phenomenom is described in our patent #6,128,952. The result is that the glass beads do not disengage from the lining every time the tire stops motion," we revised the brochure.

6. IMI raised its issue with the Exhibit A brochure on or about November 9, 2001. We immediately undertook to revise the brochure to ensure we were complying with the September 14, 2001 Order and addressing the issues raised by IMI. On or about November 27, 2001, we ordered a new set of brochures after reviewing several draft revisions to the Exhibit A brochure. This new brochure is the current brochure used by CBB for its sales and advertising in the United States.

7. The current brochure used in the United States is as attached to this Affidavit as Exhibit B, and was attached as Exhibit G to IMI's opening brief. The current brochure has been solely used in the United States since at least December 1, 2001. The current brochure does not include the language noted above questioned by IMI.

8. If we had any left over inventory of the brochures in the format shown in Exhibit A after December 1, 2001, at my direction, they would only have been distributed in Canada, Europe or South America.

9. Pending the resolution of the appeal of the September 14 Order, CBB has endeavored through all reasonable efforts to comply with the September 14 Order, and will continue to so comply with the Order.

Date: March __, 2002

Roger LeBlanc

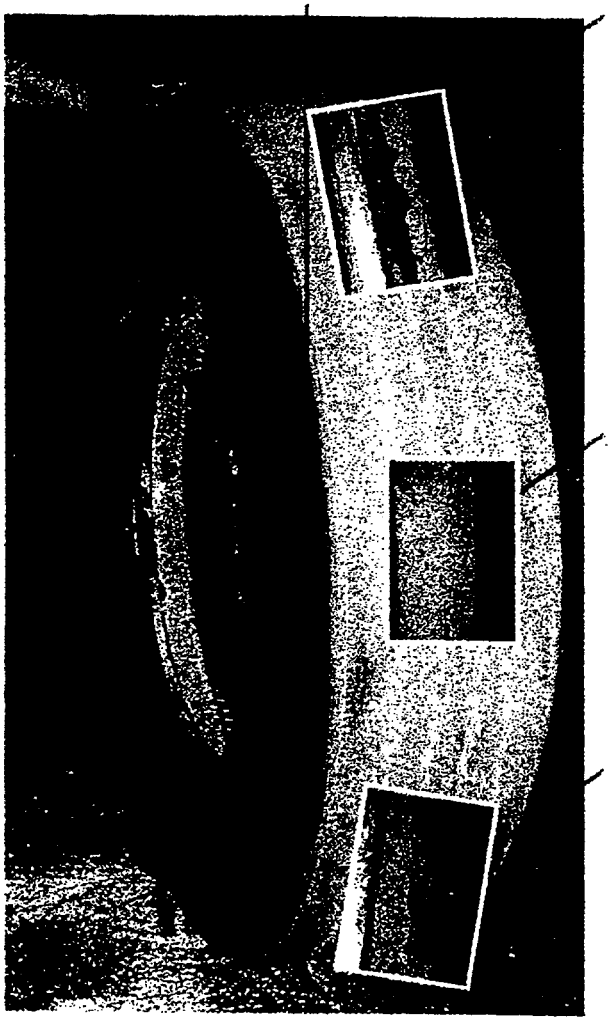
SWORN AND SUBSCRIBED to
Before me this ____ day of
March 2002.

Notary Public

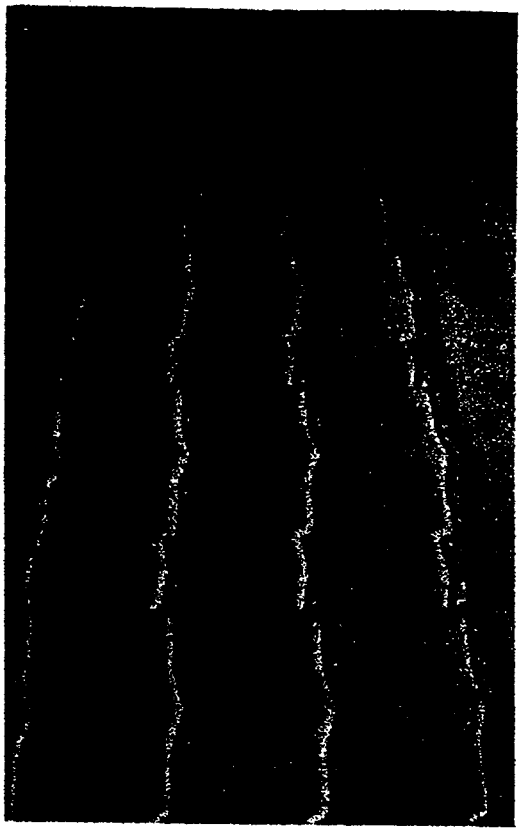
EXHIBIT A

COUNTERACT

Kinetic Clinging Micro-Beads Balancing System and how it works



Perfect Balance Perfect Wear



KINETIC CLING

Note: It has been reported that some ***steering*** tires using CBB have recorded more than 200,000 miles.

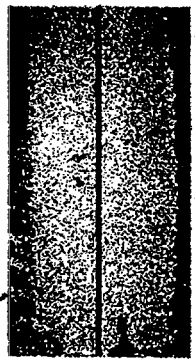
Distributed By

ADVANTAGES OF KINETIC CLINGING BEADS AND WHY THEY ARE THE BEST OVERALL!

DYNAMIC BALANCE (right of centre)

ADVANTAGES OVER LEAD WEIGHT MACHINE BALANCING

Counteract Balancing Beads balance for the complete life of the tire because they can readjust the balanced position as required... something lead weights are unable to do. Counteract Balancing Beads balance the complete wheel assembly in all wheel positions on both truck and trailer and do so economically. Counteract is protected from road hazards and obstructions inside the tire and will not fall off as lead weights can do... saving the environment from the problems caused by lead weights.



STATIC BALANCE

ADVANTAGES OVER OTHER INTERNAL BALANCING AGENTS

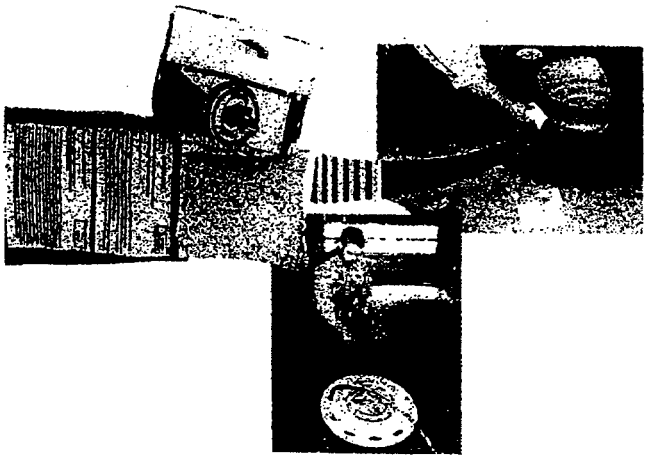
Old technology employed by other dry internal balancing agents allows the product to fall to the bottom of the tire every time the vehicle stops. As a result of this, the vehicle and its wheel assembly experience vibration until eventually balancing again at highway speeds. This occurs after every stop. The result of this repeated action can break the product down, creating dust related problems such as clumping (if moisture is present), and numerous other difficulties... all resulting in extra labor for the tire installer. Counteract Balancing Beads' balancing method employs kinetic cling — the material stays in its balanced position even when the vehicle is stopped...defying gravity, with Counteract kinetic clinging micro-beads, you won't have any of the above problems.

DYNAMIC BALANCE (left of centre)

ADVANTAGES OVER BALANCING RINGS

Unlike balancing rings, Counteract does not have to go through a vibration and eventual balancing after every stop. Counteract is protected, inside the tire, from road hazard damages. Counteract is a lot less expensive than a balancing ring and is also reusable.

Just throw it in!



All that you have to do is open the outside package and throw the inside bag into the tire

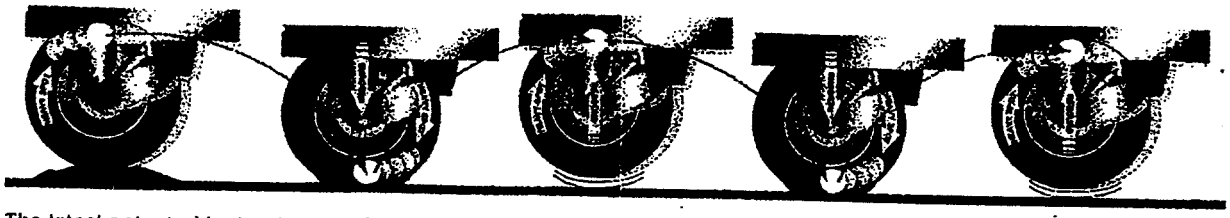
- This method allows the use of an air blaster to seat the tire on the rim, without contaminating the seating area
- The air blaster pressure inside the tire will collapse the bag containing **Counteract**'s Kinetic Clinging Balancing Beads or it will break soon after use.
- The kinetic clinging **Counteract** Balancing Beads will automatically balance the complete wheel assembly and will stabilize in the balanced position even when the vehicle is stopping and starting — effectively eliminating wear and tear and preventing *all* dust related problems.

Call 1-800-572-8952

for information on distributors in your area.

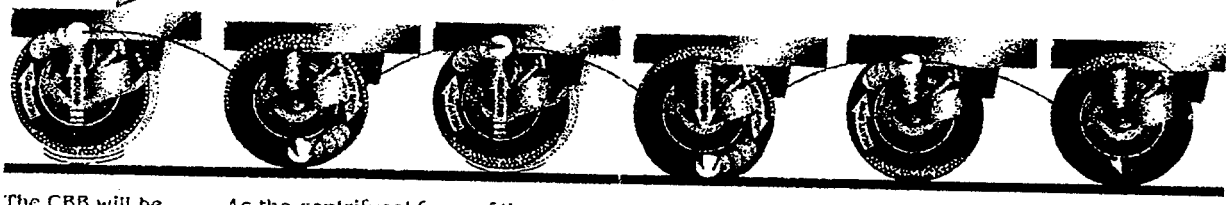
MSDS information available upon request.

OUT OF BALANCE WHEEL ILLUSTRATION AT HALF REVOLUTION



The latest patented technology available to Counteract, the out of balance condition employs kinetic clinging micro beads which stabilizes and fine tunes balancing. When Counteract Balancing Beads (CBB) are injected inside the tire they gradually move through inertia in the opposite direction of the up and down motion and automatically counteract the imbalance, remaining in this balanced position, defying gravity, even while maneuvering curves and bends on the highway and when the vehicle is in a stopped position. This eliminates wear and breakdown of CBB's balancing agent. This remarkable feat of defying gravity, a kinetic clinging phenomenon is described in our patent #6,128,952. The result is that the glass beads do not disengage from the lining every time the tire stops motion. CBB will readjust if necessary to keep the tire and wheel assembly balanced throughout the entire life of the tire. This prevents clumping due to moisture and eliminates dust problems. This product is environmentally friendly and will not react to any known chemicals. These unique characteristics result in providing the best of both worlds; the mechanical fixed weight balancing of tires and the automatic adjustment of internal balancing agents.

HOW IT WORKS



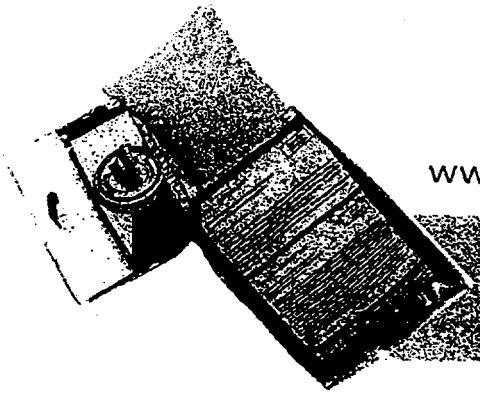
The CBB will be evenly distributed around the tire as it begins to roll through centrifugal force.

As the centrifugal force of the out of balance (heavy spot) increases and pulls up and down on the suspension, the CBB start to move in the opposite direction of the downward and upward travel through inertia.

The CBB continue to travel until the complete wheel assembly is balanced.

As explained in the patent, the beads "do not disengage from the lining whenever the tire stops motion" and thus the kinetic clinging beads maintain the wheel assembly in a balanced state.

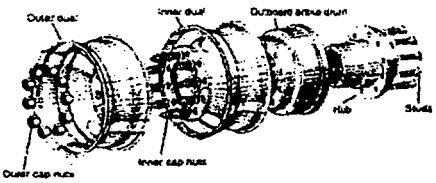
This process combines the advantages of both types of balancing: the mechanical fixed weight balancing of the tires, and the automatic adjustment of internal balancing agents.



www.counteractbalancing.com

IN TODAY'S WORLD
IT JUST MAKES SENSE TO
BALANCE ALL YOUR TIRES.
AND, IT'S RELATIVELY INEXPENSIVE
ESPECIALLY CONSIDERING THE BENEFITS:

- **Substantial savings** on wear and tear of the vehicle
- An average of 30% improvement on **tire life**
- Decreased rolling resistance of the tires and **improved fuel economy**



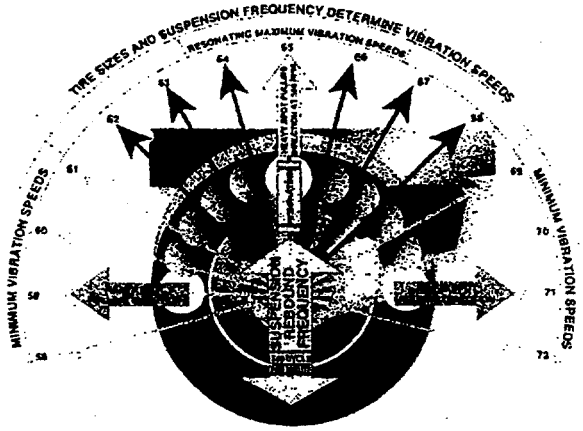
RUSSIAN ROULETTE

All parts of a wheel assembly are manufactured with tolerances for imperfections. By assembling together all these parts and their imperfections without balancing the complete wheel assembly, you are playing Russian Roulette with your mechanical repairs, tire expenses and fuel economy. The vibration that the driver feels from the steering tires also applies to all of the remaining wheels of the vehicle. In this example, the same forces are there, only they are multiplied by the dual wheel assembly to 120 pounds of up and down force. Heavy loads only shorten the wave length of the vibration. This up and down force (vibration), of 1100 times per minute, damages not only the tires, but over a period of time, many of the vehicle components, and is one of the main reasons that wheel fasteners, maxi booster clamps, U-bolts and torque rod bolts work themselves loose, not to mention cracking in frame rails and cross members, breaking of air brackets, door hinges, lights, etc. As this 120 pound centrifugal force and its rebounding multiplying factor hit the road, it has the same effect as slightly applying the brake or hitting a pot hole 550 times per minute, increasing the rolling resistance of the entire vehicle. This is because the only contact it has with the ground are its tires.

FOR INFORMATION CONTACT
COUNTERACT BALANCING BEADS
TOLL FREE AT 1-800-572-8952, FAX 905-873-3088
LOCAL CALLS 905-873-3339

COUNTERACT

THE LATEST
TECHNOLOGY
IN TRUCK TIRE
BALANCING



KINETIC CLINGING BALANCING MICRO-BEADS — HERE'S HOW THEY WORK!

A recent survey with respect to truck tire balancing reflected that the average wheel assembly imbalance for a tire size of 11R22.5 and 11R24.5 and low profile was 6 oz. balance off the vehicle and 8 oz. balance on the vehicle. For purposes of explaining the concept of tire balancing we will use the conservative average of 6 oz.

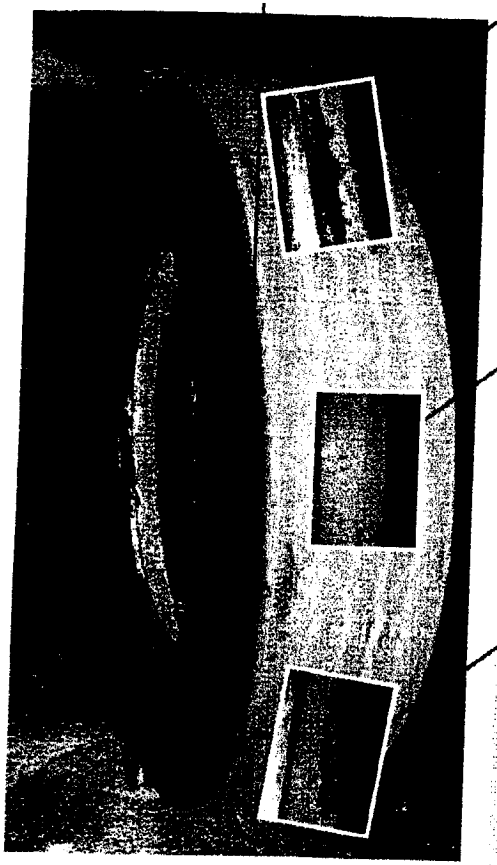
At a speed of 60 miles per hour the above sized tire revolutions per mile would be an average of 550 revolutions per minute. As a result of centrifugal force, the 6 oz. out of balance, or what is commonly referred to as the "heavy spot," will multiply itself to 60 pounds (160 g's). As the suspension of the vehicle only allows for vertical motion, the 60 pounds of centrifugal force will compress upwards and downwards on the suspension 550 times per minute, which can be reinterpreted as 1100 shock waves.

Vibration is maximized when the combined force of the rebound and the out of balance centrifugal force are aligned and resonating with reflex frequency of the suspension in unison at highway speeds; this dribbling effect sufficiently multiplies the up and down forces so as to result in the tire bouncing off the road surface. This also explains why vibration is felt only at certain speeds, and why it can be exaggerated or reduced after hitting a bump. This effect can only be eliminated by altering speed (i.e. separating the out of balance and rebound force frequencies), or by balancing the tires and wheel assembly.

EXHIBIT B

COUNTERACT

Kinetic Clinging Micro-Beads Balancing System and how it works



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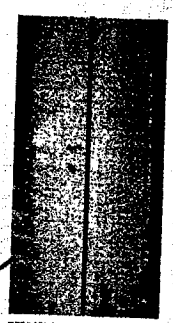

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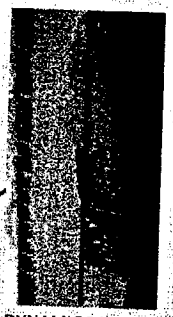

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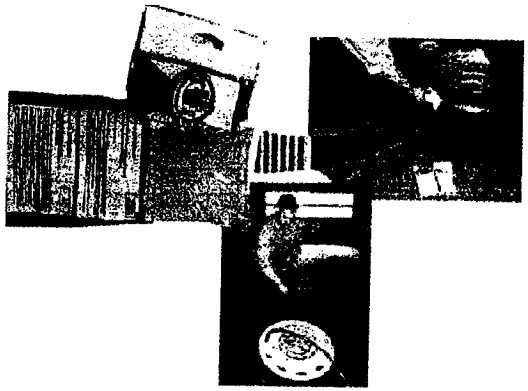

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- This method allows the use of an air blaster to seat the tire on the rim, without contaminating the seating area
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- The kinetic clinging **Counteract** Balancing Beads will automatically balance the complete wheel assembly and will stabilize in the balanced position even when the vehicle is stopping and starting — effectively eliminating wear and tear and preventing *all* dust related problems.

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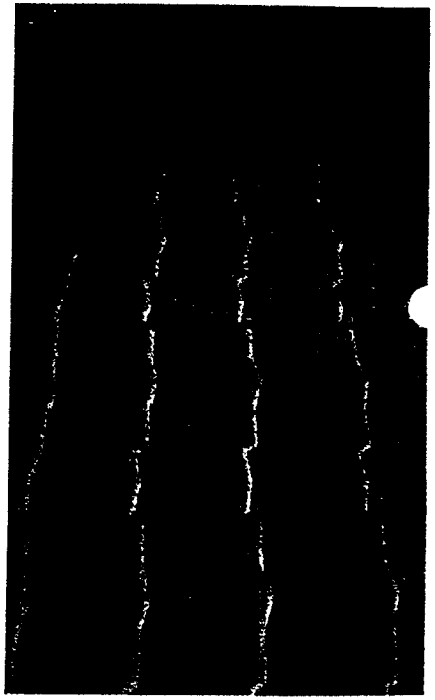
for information on distributors in your area.

Perfect Balance Perfect Wear



KINETIC CLING

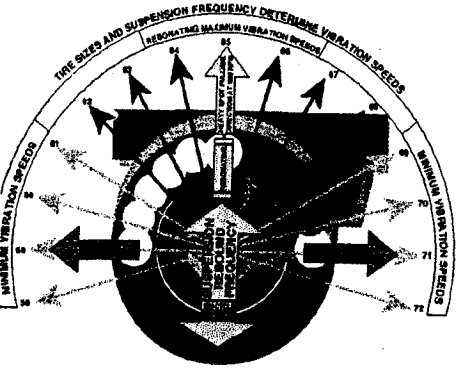
Note: It has been reported that some ***steering*** tires using CBB have recorded more than 200,000 miles.

Manufactured under U.S. Patent no. 6.126.952

Distributed By

Case 1:00-cv-00697-JAS Document 105 Filed 03/08/2002 Page 21 of 28

THE LATEST TECHNOLOGY IN TRUCK TIRE BALANCING



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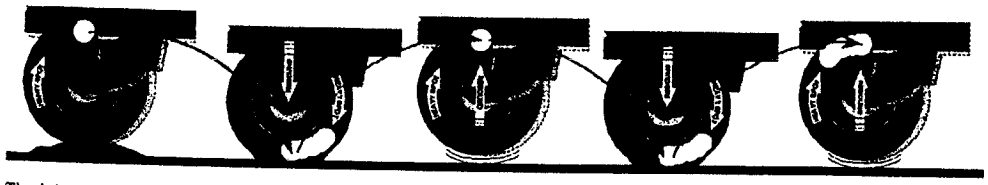

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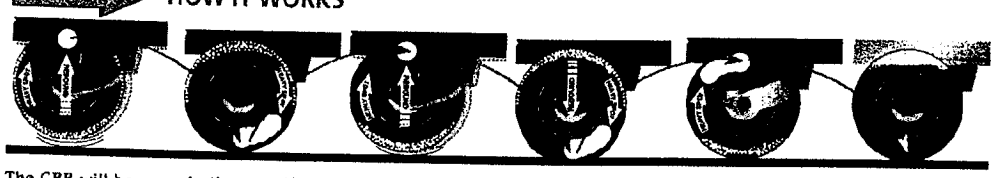

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The CBB continue to travel until the complete wheel assembly is balanced.

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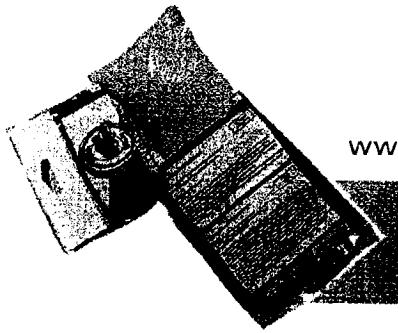
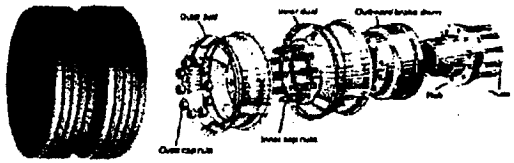


www.counteractbalancing.com

IN TODAY'S WORLD IT JUST MAKES SENSE TO BALANCE ALL YOUR TIRES. AND, IT'S RELATIVELY INEXPENSIVE ESPECIALLY CONSIDERING THE BENEFITS:

- **Substantial savings** on wear and tear of the vehicle
- An average of 30% improvement on **tire life**
- Decreased rolling resistance of the tires and **improved fuel economy**



RUSSIAN ROULETTE

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FOR INFORMATION CONTACT
COUNTERACT BALANCING BEADS
TOLL FREE AT 1-800-572-8952, FAX 905-873-3088
LOCAL CALLS 905-873-3339

Case 1:00-cv-00097-JAS Document 105 Filed 03/08/2002 Page 22 of 28

B

Kevin Goldstein
From: Allen C. Warshaw [Warshaw@duanemorris.com]
Sent: Friday, November 09, 2001 2:39 PM
To: kwgoldstein@ratnerprestia.com
Subject: RE: RE: Management Plan

Allen C. Warshaw.vcf

At the very least the following language would have to be removed. If that is acceptable I will let what if any other language we consider violative of the order.

The website still contains the following statements:

The latest technology available to counteract the out of balance condition is described in United States Patent No. 6,128,952 as follows: "The glass beads after installation and during the initial rotations of the tire will charge by tribo- or contact electrification during contact between the glass beads and the rubber of the tire. Because of the conductivity of the rubber any charge on the tire will be quickly dissipated. However, because of the high surface resistivity of the glass beads, the charge will remain on the glass beads for long periods of time. The result is that the glass beads cling against the lining of the tire at the neutralizing balanced positions. This overall clinging effect is referred as "kinetic cling". The result is that glass beads do not disengage from the lining whenever the tire stops motion because of the image force between the charge on the beads and an opposite induced in the rubber of the tire. The inventor has discovered that when the tire is dismounted the glass beads remain flush against the lining. When the installer strikes the tire or a sudden shock is felt by the tire then only will the glass beads disengage from the lining and fall free.

The Counteract Balancing Beads are manufactured under this patent.

* * *

Counteract Balancing Beads' balancing method employs "kinetic cling", as described in United States Patent No. 6,128,952. As provided in the patent "The glass beads cling against the lining of the tire at the neutralizing balanced positions. This overall clinging effect is referred as 'kinetic cling'. The result is that glass beads do not disengage from the lining whenever the tire stops motion because of the image force between the charge on the beads and an opposite induced in the rubber of the tire." Other internal balancing agents fall to the bottom of the tire each time the vehicle stops, which causes the vehicle to experience vibration until it is eventually rebalanced at highway speeds; with these products, this occurs after every stop. The result of this repeated action is that the product breaks down into dust, which can create such dust-related problems as clumping. Counteract Balancing Beads avoid all of these problems.

While Counteract's brochure does not contain the same language as the website, it does claim that:

This remarkable feat of defying gravity, a kinetic clinging phenomenom is described in our patent #6,128,952. The result is that the glass beads will do not disengage from the lining every time the tire stops motion.

The patent describes a process which it calls "electrostatic cling."

Kevin Goldstein <kwgoldstein@ratnerprestia.com> 11/08/01 04:40PM >>>
Based on your email of last evening, I went back over the CBB website to see were there may be a description of the electrostatic cling process that was not previously revised. I found one part in the FAQ section that refers to

C

Kevin Goldstein
From: Kevin Goldstein
Sent: Monday, November 26, 2001 12:42 PM
To: 'Allen C. Warshaw'
Subject: RE: RE: Management Plan

Allen:

A new fold out brochure was ordered from the printer last week and is expected late this week or next week. As soon as I get one, I will send it over to you.

Kevin

-----Original Message-----
From: **Allen C. Warshaw [mailto:Warshaw@duanemorris.com]**
Sent: Monday, November 26, 2001 11:07 AM
To: kwgoldstein@ratnerprestia.com
Subject: RE: RE: Management Plan

<< File: Allen C. Warshaw.vcf >> When can we see the latest brochures?

>>> Kevin Goldstein <kwgoldstein@ratnerprestia.com> 11/09/01 04:51PM >>>
The two paragraphs or sections of the website that you note in your email are the ones that we noticed earlier this week and are being (or have been) changed. The revisions remove references to electrostatic cling, image forces, tribo-electrification and beads charges. The website does state that the product is manufactured under U.S. Patent No. 6,128,952. That is as determined and concluded by the Court.

I have requested a copy of all brochures to check where the "electrostatic cling" phrase may be used. I had understood that was removed, but I have been wrong before. I should have the brochures by early next week.

Kevin

-----Original Message-----
From: Allen C. Warshaw [mailto:Warshaw@duanemorris.com]
Sent: Friday, November 09, 2001 2:39 PM
To: kwgoldstein@ratnerprestia.com
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Wilmington, Delaware 19803
Telephone 302-479-9470 • Fax 302-479-9480
www.ratnerprestia.com
Valley Forge, PA • Allentown, PA • Wilmington, DE

FACSIMILE COVER SHEET

DATE: December 3, 2001 OUR REF.: _____

TIME: 5:37 PM YOUR REF.: _____

FROM:	Kevin Goldstein
TO:	Allen Warshaw
COMPANY:	Duane Morris
FAX TELEPHONE:	717-232-4015
OFFICE TELEPHONE:	717-235-5500
TITLE OF DOCUMENT:	

Total Number of Pages: 3 *(including this form)*

COMMENTS

Allen:

Attached is a copy of the latest version of the CBB fold out brochure.

Kevin

CONFIDENTIAL AND PRIVILEGED ATTORNEY/CLIENT INFORMATION

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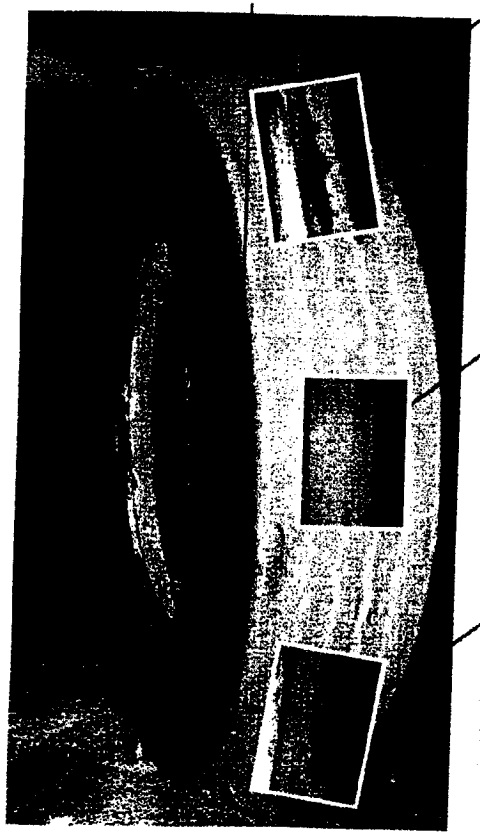
Please notify us immediately if you have not received the number of pages indicated above.

COUNTERACT

Kinetic Clinging Micro-Beads Balancing System and how it works

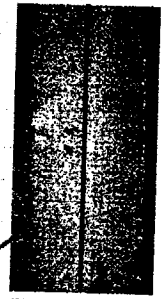


ADVANTAGES OF KINETIC CLINGING BEADS AND WHY THEY ARE THE BEST OVERALL!

DYNAMIC BALANCE (right of centre)

ADVANTAGES OVER LEAD WEIGHT MACHINE BALANCING

Counteract Balancing Beads balance for the complete life of the tire because they can readjust the balanced position as required... something lead weights are unable to do. Counteract Balancing Beads balance the complete wheel assembly in all wheel positions on both truck and trailer and do so economically. Counteract is protected from road hazards and obstructions inside the tire and will not fall off as lead weights can do... saving the environment from the problems caused by lead weights.



STATIC BALANCE

ADVANTAGES OVER OTHER INTERNAL BALANCING AGENTS

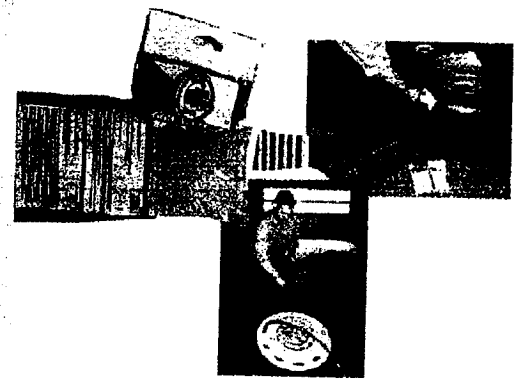
Old technology employed by other dry internal balancing agents allows the product to fall to the bottom of the tire every time the vehicle stops. As a result of this, the vehicle and its wheel assembly experience vibration until eventually balancing again at highway speeds. This occurs after every stop. The result of this repeated action can break the product down, creating dust related problems such as clumping (if moisture is present), and numerous other difficulties... all resulting in extra labor for the tire installer. Counteract Balancing Beads produced under U.S. Patent No. 6,126,952 have been found to cling to the truck tire when the vehicle is stopped. With Counteract Balancing Beads you won't have dust or product breakdown problems.

DYNAMIC BALANCE (left of centre)

ADVANTAGES OVER BALANCING RINGS

Unlike balancing rings, Counteract does not have to go through a vibration and eventual balancing after every stop. Counteract is protected, inside the tire, from road hazard damages. Counteract is a lot less expensive than a balancing ring and is also reusable.

Just throw it in!

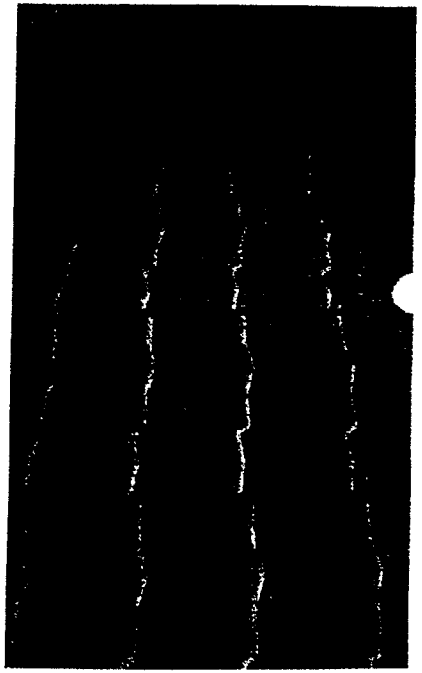


All that you have to do is open the outside package and throw the inside bag into the tire

- This method allows the use of an air blaster to seat the tire on the rim, without contaminating the seating area
- The air blaster pressure inside the tire will collapse the bag containing **Counteract**'s Kinetic Clinging Balancing Beads or it will break soon after use.
- The kinetic clinging **Counteract** Balancing Beads will automatically balance the complete wheel assembly and will stabilize in the balanced position even when the vehicle is stopping and starting — effectively eliminating wear and tear and preventing *all* dust related problems.

Call 1-800-572-8952
for information on distributors in your area.

Perfect Balance Perfect Wear



KINETIC CLING

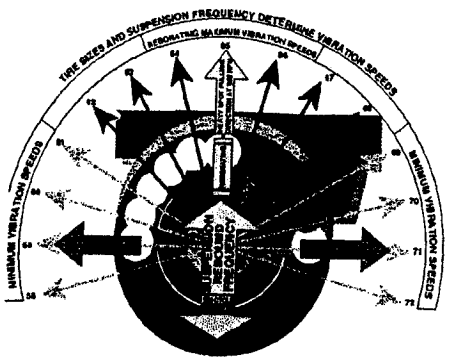
Note: It has been reported that some ***steering*** tires using CBB have recorded more than 200,000 miles.

Manufactured under U.S. Patent no. 6,126,952

Distributed By

Case 1:00-cv-00697-JAS Document 105 Filed 03/08/2002 Page 26 of 28

THE LATEST TECHNOLOGY IN TRUCK TIRE BALANCING



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Vibration is maximized when the combined force of the rebound and the out of balance centrifugal force are aligned and resonating with reflex frequency of the suspension in unison at highway speeds; this dribbling effect sufficiently multiplies the up and down forces so as to result in the tire bouncing off the road surface. This also explains why vibration is felt only at certain speeds, and why it can be exaggerated or reduced after hitting a bump. This effect can only be eliminated by altering speed (i.e. separating the out of balance and rebound force frequencies), or by balancing the tires and wheel assembly.

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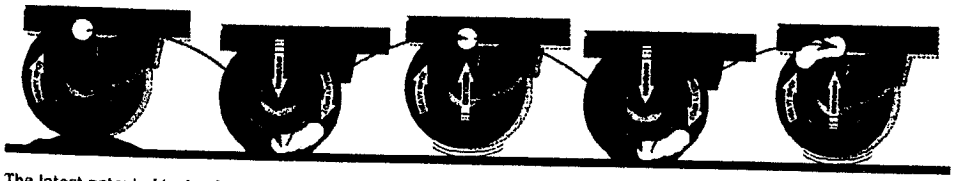

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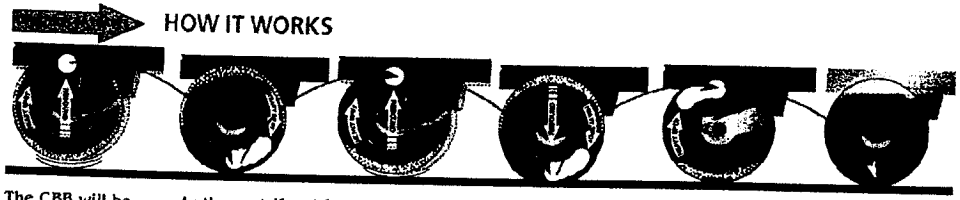

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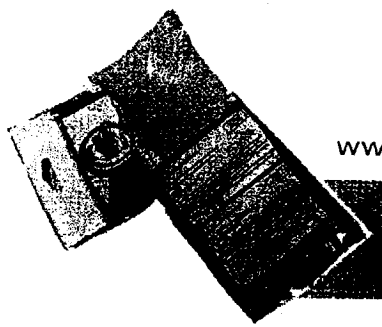

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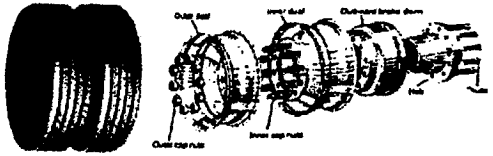

RUSSIAN ROULETTE

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LOCAL CALLS 905-873-3339

Case 1:00-cv-00697-JAS Document 105 Filed 03/08/2002 Page 27 of 28

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FACSIMILE COVER SHEET

DATE: December 3, 2001

TIME: 5:37 PM

OUR REF.:

YOUR REF.:

FROM:	Kevin Goldstein
TO:	Allen Warshaw
COMPANY:	Duane Morris
FAX TELEPHONE:	717-[illegible]